

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Extension of Terms for 220-222 MHz)	
Band Phase I Nationwide Licenses held by Access)	
220 LLC (WPFP444 and WPFR284) and Other)	
Relief or, Alternatively, for Renewal of Licenses)	
)	WT Docket No. 02-224
Petition for Extension of Term for 220-222 MHz)	ULS Application Nos.
Band Phase II Nationwide License Held by Access)	0001873639 and
220 LLC (WPOI701) and Other Relief)	0001873671
)	
Petition for Extension of Terms for 220-222 MHz)	
Band Phase II Economic Area and Regional)	
Licenses Held by Access 220 LLC and Other)	
Relief)	

To: Mobility Division, Wireless Telecommunications Bureau

PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Federal Communications Commission's ("Commission's") rules,¹ Access 220, LLC and its parent, Access Spectrum, LLC (collectively, "Access Spectrum"), hereby seek reconsideration of the Memorandum Opinion and Order released October 23, 2006 in the above-captioned proceeding.² Access Spectrum requests that the Division, on reconsideration, establish October 23,

¹ 47 C.F.R. § 1.106.

² *Petition for Extension of Terms for 220-222 MHz Band Phase I Nationwide Licenses held by Access 220 LLC (WPFP444 and WPFR284) and Other Relief or, Alternatively, for Renewal of Licenses; Petition for Extension of Term for 220-222 MHz Band Phase II Nationwide License Held by Access 220 LLC (WPOI701) and Other Relief; Petition for Extension of Terms for 220-222 MHz Band Phase II Economic Area and Regional Licenses Held by Access 220 LLC and Other Relief*, WT Docket No. 02-224, ULS Application Nos. 0001873639 and 0001873671, Memorandum Opinion and Order, DA 06-2093 (rel. Oct. 23, 2006) ("*Waiver Order*").

2011 (five years after the release date of the *Waiver Order*) as the date for renewal and satisfaction of the associated construction requirements for Access Spectrum's two 220 MHz Phase I nationwide licenses.

On September 16, 2004, Access Spectrum filed a Request for Renewal of Licenses and for Additional Waivers in which it explained that the existing regulatory construct, including the construction requirements, impeded FCC goals for the 220 MHz band. Access Spectrum sought, *inter alia*, renewal of its two 220 MHz Phase I nationwide licenses (call signs WFPF444 and WPFR284) for a period of 15 years.³ One of Access Spectrum's primary objectives was to obtain some "running room" in order to attract customers that would put the spectrum to use. In its *Waiver Request*, Access Spectrum explained that the "near-term, repeated application of performance requirements . . . is not in sync with the typical timetable for third party network deployment and provision of service to end users" and that "[t]he existence of these deadlines has inadvertently jeopardized the viability of the band manager concept."⁴ Access Spectrum then summarized the fundamental problem: "the Commission's existing regulatory environment is fostering a vicious cycle: customers are reluctant to lease spectrum from Access Spectrum because of concerns about upcoming construction deadlines, and that reluctance in turn makes it more difficult for Access Spectrum to satisfy performance requirements based on customer build-out."⁵

³ *Access 220, LLC Request for Renewal of Phase I Nationwide 220 MHz Licenses, and for Additional Waivers of Part 90*, Request for Renewal of Licenses and for Additional Waivers, ULS Application Nos. 0001873639 and 0001873671 (Sep. 16, 2004) ("*Waiver Request*").

⁴ *Id.* at 16.

⁵ *Id.* at 17.

The Mobility Division of the Wireless Telecommunications Bureau recognized the uniqueness of the problems confronting Access Spectrum as a band manager. On October 23, 2006, the Division issued a Memorandum Opinion and Order partially granting the *Waiver Request* for the Phase I licenses, providing a conditional five-year renewal for the two Phase I nationwide licenses.⁶ The Division recognized that Access Spectrum had made efforts to meet the license requirements. The *Waiver Order* acknowledges that Access Spectrum had contributed to the development of 220 MHz equipment efforts and had entered into spectrum use agreements (“SUAs”) within a very limited period of time notwithstanding the various technical and equipment challenges presented by the 220 MHz band.⁷ Accordingly, the Division granted a conditional renewal providing Access Spectrum with five years to meet construction requirements with respect to its two Phase I nationwide licenses.⁸ Unfortunately, by the time the order was released, over two years had elapsed from the time the *Waiver Request* was filed. During those two years, Access Spectrum was seriously hindered in its efforts to find customers interested in using the Phase I licenses, which had come up for renewal in September 2004. As a result, the five years ostensibly provided to meet the construction requirements effectively was reduced to less than three years.

Access Spectrum originally requested an extension of the license for 15 years, not 5 years. However, five years is an absolute minimum period of time during which the licenses must be clear of regulatory uncertainty to enable Access Spectrum to reach agreements with customers to use the spectrum. Access Spectrum therefore requests

⁶ *Waiver Order* ¶¶ 23-24, 25(c).

⁷ *Id.* ¶ 23.

⁸ *Id.* ¶¶ 24, 25(c).

reconsideration of the *Waiver Order* to establish October 23, 2011 as the date for renewal and satisfaction of the associated construction requirements for the two 220 MHz Phase I nationwide licenses. This date would provide a full five years to satisfy the construction requirements. Access Spectrum would still file a report with the Commission on November 5, 2007 as required by the *Waiver Order*, and would be willing to file a second report on November 5, 2009 if desired.

The most recent two years should not be included in the five-year construction period because the ability to make progress toward satisfaction of the construction requirements during that time was greatly reduced by the uncertainty surrounding the consideration of the *Waiver Request*. Because Access Spectrum is a band manager, the “predominant amount” of its spectrum must be leased to third parties.⁹ The Commission contemplates Access Spectrum meeting the license construction requirements wholly or partially through the construction activities of its customers.¹⁰ However, regulatory uncertainty has hindered the ability to attract customers.

For the last two years, the two Phase I nationwide licenses have been under a regulatory cloud. Potential spectrum lessees understood that a Commission refusal to grant relief to Access Spectrum could have resulted in immediate cancellation of the licenses. As Access Spectrum explained in its original *Waiver Request*, “[i]f potential customers have reason to doubt that Access Spectrum can provide uninterrupted access to

⁹ *Access 220, LLC Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band*, Memorandum Opinion and Order, 17 FCC Rcd 20464, ¶ 17 (2002).

¹⁰ *Id.* ¶23.

such spectrum, they will be less likely to enter into spectrum use agreements.”¹¹ The possibility of license cancellation attached to these licenses for the past two years has severely hindered Access Spectrum’s spectrum leasing efforts (which naturally affects its ability to meet construction requirements).¹²

The impact of the *Waiver Order*’s accelerated construction schedules and regulatory uncertainty must be considered in light of Access Spectrum’s unique role as a band manager. A traditional licensee would be motivated to construct on an accelerated schedule by a vested operational interest in retaining the spectrum and could address a truncated renewal period with aggressive construction efforts. By contrast, because their operational interests would not vest until after an SUA is executed, potential lessees would have the incentive to *avoid* entering into SUAs for spectrum that is subject to an accelerated construction schedule. Moreover, the shortened time before license renewal makes the regulatory uncertainty more acute and lessens incentives for customers to execute SUAs.

The *Waiver Order* finds it to be in the public interest to allow Access Spectrum to continue its spectrum management role and determines that the limited relief provided (combined with the efforts of Access Spectrum) could result in the efficient use of the spectrum in the near term. Tying the five-year construction period to the date of the

¹¹ Waiver Request at 16. As Access Spectrum informed the Commission in its *Waiver Request*, “Access Spectrum’s customers generally . . . require access to the spectrum for at least five years after system deployment to earn a return on their investment.” *Id.* The three-year period by which license construction must be completed under the current terms of the *Waiver Order* is not sufficient for most potential customers to recoup their investments. When combined with the inherent uncertainty about whether renewal ultimately will be granted, the short period of time remaining before renewal consideration further lessens potential customers’ willingness to initiate spectrum use agreements.

¹² *Waiver Request* at 16.

Waiver Order release is consistent with Commission precedent.¹³ Moreover, it will accomplish two related objectives: (1) it will provide the greater regulatory certainty needed to attract users; and (2) the increased interest in the spectrum will enhance license construction efforts. This, in turn, will facilitate the Commission's goal of intensive use of the 220 MHz spectrum.

For the foregoing reasons, Access Spectrum requests that the Division, on reconsideration, establish October 23, 2011 as the date for renewal and satisfaction of the associated construction requirements for Access Spectrum's two 220 MHz Phase I nationwide licenses.

Respectfully submitted,

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¹³ See, e.g., *County of Beaver; Request for Extension of Time to Construct 800 MHz Public Safety/Special Emergency Trunked Station WPKM927, Beaver, Pennsylvania; Application for Renewal of Station WPKM927*, Memorandum Opinion and Order, 18 FCC Rcd 18754, ¶11 (2003) (granting request for one-year extension of the construction deadline and tolling that one-year period from the order's release date).